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"The Essential Religious Practice Test/ Doctrine of Essentiality"

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India is a country where there is large diversity on the basis of various grounds such as language, race, religion, region, caste etc. There are 8 If not more religions prevalent in India. Due to this, the State has rightfully introduced and maintained in its system the concepts of Secularism and Religious Pluralism which means that the State of India does not have a specific state religion that is favoured over others and that all religions are to be treated equally and given equal importance and protection. Religious Pluralism is the state of being where every individual in religiously diverse society has the rights, freedom and safety to worship, or not, according to their conscience. The primary protection given to these religions is from the Constitution which is the Lex Loci or the Supreme Law of the land. Article 25 in Part III of the Constitution provides us with various freedoms and rights which protect our beliefs and practices from being violated.

Article 25 of the Constitution of India confers on all Persons the freedom of Conscience, Practice and Propagation of a Religion-

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

This article protects matters of religious doctrine or belief as well as acts done in pursuance of religion- rituals, observances, ceremonies and mode of worship. This article embodies religious tolerance that has been one of the characteristic features of Indian Civilization from the start of its history. This also emphasizes the secular nature of the Indian Polity which the founding fathers considered the very basis of the Constitution. This Right isn't guaranteed just to the citizens of India but all persons.

However, does this mean that there is no restriction on the this right and the State can make no regulations for the same? That is untrue, this article and right isn't absolute and the State is permitted to put reasonable restrictions and regulate the practice of a particular religion. The questions which come forth are what type of practices ought to be permitted and the other type which ought not to be. The other question that arises is who should be permitted to make such a distinction between the two types of practices and on what grounds.

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It is due to this controversy did the "essential religious practice test" which was evolved by the Supreme Court come into existence. This doctrine says that only those practices which form the crux and very basis of the religion is to be considerable in a dispute. Things which are not connected and do not form the essence of the religion are not of considerable value and shouldn't avail constitutional protection. An Essential Practice for the Religion would be any practice without which the substratum of the religion would fail, any other activity will not be an essential religious practice. The test protects only those practices without which the religion would not be the same. In the legal sense, the court has said that essential part of a religion means the core beliefs upon which the religion is founded.

The Doctrine has majorly developed in three judgements of the Supreme Court. The Doctrine was originally conceived in *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmidar Thirtha Swamiyar of Shri Shirur Mutt*[1] or popularly known as The Shirur Mutt Case, in this case the Court made a distinction between 'religious' and 'secular' practices where 'religious' practices were considered to be the ones of utmost importance to the religion and 'secular' activities defined as practices which were associated with the religion but do not really constitute an essential part of it for example economic, financial and political activities and hence, only 'religious practices' were considered to be essential and integral and could avail constitutional protection. In this case, the State was propounding that it could involve itself in the management of the affairs of the religious institution, the Court declaring that it could interfere in the management of 'secular' activities but not 'religious' activities. In the Shirur Mutt case the Court stated what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of article 26(b)"

The Court in this case even went to the extent of stating that a religious denomination or organization enjoys complete autonomy in deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.

In *Sri Venkatarmana Devaru v. State of Mysore*[2], the Court laid down a crucial precedent which marked a shift in judicial approach wherein the Court's role became determinative in determining whether a practice qualified as essential. Thus, the test of determining what is 'essentially religious'(as distinct from secular) became conflated with 'essential to religion'.

[1] AIR 1954 SC 282,290
[2] 1959 AIR 255, 1958 SCR 895

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In *Dargah Committee, Ajmer v. Syed Hussain Ali*[3], the Court stated that a distinction had to be drawn between practices essential and integral to religion vis-a`-vis practices though religious but which have sprung from merely superstitious beliefs. Thus, the protection of Art.25 and 26 was confined only to such religious practices which were essential and integral to the religion in the light of the aforesaid formulations.

It must also be noted that in the subsequent years, the use of the doctrine by the Court to decide what is 'essential' to religion and what is not has led to many contradictory stances by the Court. This is because of the peculiarity of each case. Each case has different facts and are unique their own way, the Court understands this and hence there cannot be any fixed precedent for the same. An example would be of the *The Indian Young Lawyers Association & Othrs. V. The State of Kerela and Othrs*[4] (Sabarimala Case),the decision of allowing women to enter the temple is specific to just that temple and not all temples in the country which don't allow entry to women.

Justice D Y Chandrachud in the Sabarimala Case, made a rational point "Due to this essentiality doctrine, Judges are now assuming a theological mantle which we are not expected to do" Due to this the opinion of the Judge is more powerful than an entire religion and is a voice as strong as god. The Judge abolishes an ancient practice merely with a blow on the table by a mallet. Due to this Chandrachud, in the same case opined that there should be an alteration to the doctrine i.e "The test should be whether a practice subscribes to the Constitution irrespective of whether it is essential or not" In the same judgement Justice Chandrachud also criticised the essential religious practice test calling it a problem. He said " There is a problem with our jurisprudence. Essentiality aspect has taken charge of Article 25 but it should not be so, because if something is essential it becomes inviolable."

The Courts have always on the point that the question will always have to be decided upon "the evidence adduced before it as to the conscience of the community and the tenets of the religion"[5] Conscience means the moral sense, the faculty of judging the moral qualities of actions, or of discriminating between right or wrong[6]. Tenets means one of the principles or beliefs that a larger set of beliefs is based on.[7] This implies that the Court looks into the beliefs of every community and looks as to what they regard as essential and fundamental to their religion. If the religious tenets don't allow a woman to become a priest, the state cannot import secular ethos of gender equality to allow a woman to be appointed as a priest. If it is allowed, the constitutional protection will become void and hollow[8]

[3] 1961 AIR 1402, 1962 SCR(1) 383
[4] Writ Petition(Civil) no. 373 of 2006
[5] Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Othrs. 1963 AIR 1638, 1964 SCR(1) 561
[6] Black's law Dictionary, 2nd Edition
[7] Oxford Learners Dictionary
[8] Amnah Bint Basheer v. Central Board of Secondary Education WP(C)No.6813 of 2016(B) Kerela High Court

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Justice Chandrachud in para 46 of his opinion, analyses the Triple Talaq[9] judgment in the following manner "While the majority based its conclusion on an examination of the substantive doctrines of Islam and the theological sanctity of triple talaq, the minority relied on the widespread practice of triple talaq to determine its essentiality. The majority and minority concurred, however, that the belief of a religious denomination claiming a particular practice to be essential must be taken into consideration in the determination of the essentiality of that.

In a case, the Madras High Court held that a the worshipper has every right to worship the Deity as and where the same was originally installed, and said that the shifting of the deity even though permitted by the scriptures could not be allowed as the same was not allowed according to the custom followed by the Temple.[10]

All these instances are testimony to the fact that the essentiality of a religious belief or practice has to be assessed purely based on the doctrine of the religion in question which is different in every case. Hence, reiterating that there cannot be a general precedent set across different religions holding a certain practice as unessential.

Besides, there has been no particular kind of evidence that the court has always depended upon in matters of deciding what is "essential" and "integral". The court has looked at historical texts in a few matters[11], empirical evidence in some others[12] or looked at whether the practice exists from times immemorial or not.[13]

The Court has always made a distinction between practices that are essential and those which are merely based on superstitious belief. Practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself.[14]

Even though the Courts have drawn a distinct line between what is mere superstition and what is essential and religious to a religion, they have acknowledged the fact that there cannot be a common ground or a set of superstitions which are common to all. What is religion to some is pure dogma to others and what is religion to others is pure superstition to some others.[15]

The Courts have also always drawn a distinct line between what is essential to a religion, and what is a custom which is "sanctioned" by the religion. In the Quereshi case[16], the matter before the Supreme court was whether cow sacrifice was an essential practice in Islam on the day of Bakri Eid. After going to the Islamic custom of animal sacrifice and the tradition

[9]ShayaraBano vs Union Of India, Writ Petition (C) No. 118 of 2016
[10]Chockalingam Now Died Versus NambiPandiyan 8 Others LNIND 2010 BMM 1748
[11] Gram Sabha of Village BattisShirala v. Union of India Writ Pet. No. 8645 of 2013
[12]Fasi v. Superintendent of Police 1985 ILLJ Ker 463
[13] Commissioner of Police and others Vs. Acharya Jagadishwarananda Avadhuta and another, (2004) 12 SCC
[14]Durga Committee, Ajmer &Anr. vs. Syed Hussain Ali &Ors
[15] S.P. Mittal Vs. Raghubir and others, AIR 1983 SC 1
[16]Mohammad Hanif Quareshi v. State of Bihar, AIR 1958 SC 731

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maintained by Muslim rulers in India, the Supreme Court observed that cow sacrifice was sanctioned by Islam but it was not an obligatory overt act to express Islamic faith.

In another case, on deciding whether a practice is essential or not, the Madras High Court in the judgment said, "But it is not every custom and practice that could be placed on a high pedestal along with those religious rites and rituals, which are inviolable."[17] In the same case, the court had held that if a custom or practice is even followed for several years, and if the same is not according to the ancient religious text, the mere fact that it was practiced for a long period of time does not mean it will be protected under Article 25 and 26. The matter was regarding the relocation of "yagasala" outside the temple and the court held that the very construction of the yagasala was an essential practice, however, the practice of locating it inside the temple as it was done for centuries, was not.

The Doctrine has been one which has seen quite many changes in the course of history and will see much more in the future, however Courts have always made sure that it is always careful, just, prudent and have always kept in mind and balanced the interests of the Citizens as a whole and the Interests of the Religion concerned. As long as the apex Court which is the guardian of our rights keeps doing this then the future of our great nation and religions will always be in safe hands.

[17]Sona.Krishnamoorthy vs The Commissioner, Writ Appeal (MD) No.243 of 2009